

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONTE BOOKER,

Defendant.

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CASE NO. 1:13-CR-50

ORDER

[Resolving Doc. [190](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Defendant Donte Booker, proceeding *pro se*, moves the Court to appoint counsel under the Criminal Justice Act, 18 U.S.C. § 3006A.¹ Because the Court does not have jurisdiction over Defendant's motion, it is **DENIED**.

On August 8, 2018, the Court issued an opinion and order denying Defendant's motion to reduce his sentence and to appoint counsel.² In that opinion, the Court noted that Booker must make any requests for appointment of appellate counsel to the Sixth Circuit.³ Defendant appealed that order,⁴ and now moves the Court again to appoint counsel.⁵

Generally, a timely-filed notice of appeal divests a district court of jurisdiction over the matters subject to appeal, and jurisdiction passes to the circuit court.⁶ Because Defendant Booker timely filed a notice of appeal to the Sixth Circuit,⁷ the Court lacks jurisdiction to consider his motion.

¹ Doc. [190](#).

² Doc. [188](#).

³ *Id.*

⁴ Doc. [189](#).

⁵ Doc. [190](#).

⁶ See *Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir. 1993) ("As a general rule, the district court loses jurisdiction over an action once a party files a notice of appeal, and jurisdiction transfers to the appellate court.").

⁷ Doc. [189](#).

The Sixth Circuit rules support this result, as they suggest that the circuit court—not the district court—appoints appellate counsel under the Criminal Justice Act. Sixth Circuit Rule 12(c)(3) provides that “[w]hen *the court* directs appointment of counsel for an appellant under the Criminal Justice Act, the clerk [of the Sixth Circuit] will select counsel as provided in the Sixth Circuit Criminal Justice Act Plan.”⁸

The rules also indicate that Defendant Booker should move the Court to proceed *in forma pauperis* prior to seeking appointment of appellate counsel. Sixth Circuit Rule 12(c)(4)(A) provides that “[i]f the defendant is indigent and seeks the appointment of counsel pursuant to the Criminal Justice Act application must *first* be made to the district court for leave for the defendant to proceed in forma pauperis.”⁹ If Defendant Booker requests leave from the Court to proceed *in forma pauperis*, the Court will consider his request.

For the forgoing reasons, the Court **DENIES** Defendant’s motion for appointment of counsel.

IT IS SO ORDERED.

Dated: September 21, 2018

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁸ 6th Cir. R. 12(c)(3) (emphasis added).

⁹ 6th Cir. R. 12(c)(4)(A) (emphasis added).